



BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070027

Petitioner, Nancy Parker applied to the Board of Appeals for zoning relief to construct a garage, driveway, retaining wall and other ancillary structures within the required front yard of her property at 45 Westbourne Terrace.

On April 12, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed May 17, 2007 at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published May 3 and 10, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

**Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **Nancy PARKER**

Location of Premises: **45 WESTBOURNE TERRACE BRKL**

Date of Hearing: **05/17/2007**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a special permit and/or variance from:

- 1) **5.43, Exceptions to yard and Setback Regulations; Special Permit Required.**
- 2) **5.50, Front Yard Requirements; Variance Required.**
- 3) **5.51, Projections into Front Yards; Variance Required.**
- 4) **5.52, Fences and Terraces in Front Yards; Variance Required.**
- 5) **5.53, Accessory Buildings in Front Yards, Variance Required.**
- 6) **5.60, Side Yard Requirements; Variance Required.**
- 7) **5.61, Projections into Side Yards; Variance Required.**
- 8) **5.62, Fences and Terraces in Side Yards; Variance Required.**
- 9) **5.63, Accessory Buildings or Structures in Side Yards; Variance Required.**
- 10) **For the Design of All Off Street Parking Facilities;**
  - 6.04.5.c.1, Variance Required.
  - 6.04.5.c.2, Variance Required.
  - 6.04.9.b, Variance Required.
  - 6.04.12; Special Permit Required.
- 11) **8.02.2; Alteration or Extension; Special Permit Required**, of the Zoning By-Law to construct a garage, driveway, retaining walls and other ancillary structures in the front yard per plan at **45 WESTBOURNE TERRACE BRKL.**

Said Premise located in a T-5 District.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Bailey Silbert and Lawrence Kaplan. Mr. Phillip Kramer, AIA of 84 Davis Avenue, Brookline, presented the case before the Board. Nancy Parker, homeowner, was also in attendance.

Mr. Kramer described the neighborhood as residential, mostly one and two family dwellings. 45 Westbourne Terrace is a wood frame, two-story, two-family structure that is located directly across the street from the Driscoll School on the up-gradient side of the street. Because of the steep grade on the property, there is no off-street parking for the home. A retaining wall with a set of stairs is used to access the home. Several of the neighboring homes with similar site characteristics have, over the years, constructed garages into the slope to provide for off-street parking. Mr. Kramer described the project as the excavation of the hillside, construction of a poured concrete garage structure of approximately 14x22 feet sited parallel to the road. The street side and northern exposed elevations will be clad in wood siding. A man-door on the street side will be used to access the garage. By siting the garage in this way a driveway can also be accommodated for the parking of an additional vehicle and entrance and exit will not be perpendicular to the road for safer operation. A retaining wall will be constructed to provide space for the driveway. The top of the garage and disturbed area will be landscaped to provide for a counterbalancing amenity required under the requested relief. The Chair, at this point introduced a letter dated 10 May, 2007 from Mr. Larry Yackle. Mr. Yackle lives at 49 Westbourne Terrace, a direct abutter. He expressed concern about the structural integrity of his home during and after construction. Mr. Kramer responded by saying that this was a difficult site and before and during construction, the services of a licensed professional engineer will be

retained for the design and to monitor the construction process. He further stated that this was no job for an inexperienced contractor and that they would retain the services of a contractor experienced with the potential pitfalls of construction of this type. He stated that the relief needed would be under Sections 5.43, 6.04.12 and 8.02.2.

The Chair asked whether anyone wished to speak in favor or in opposition to the proposal. No-one, other than the petitioner was present.

Planner, Adam Serafin, then reviewed the comments and recommendations of the Planning Board. He stated that the applicant, Nancy K. Parker, wishes to construct a garage and driveway within the front yard setback, to allow for the onsite parking of two vehicles. As part of the proposal, the existing sloping front yard will be excavated approximately 18 feet back from the sidewalk, which will include the removal of the existing stone retaining wall and concrete walkway. A new pre-cast segmented retaining wall system with stone caps will be constructed which will be approximately 12' at its highest point and taper down to 4' at its lowest point. The retaining wall will run parallel to the street on its northern side and curve toward the street on its southern side. A one-car garage will be built on the northern side of the excavation, and will be 14' wide, 22' long and 15' high. A driveway will be constructed on the southern portion of the excavation which will lead to the garage door entrance, which will be perpendicular to the street lot line. A new stairway will run along the street-facing side and over the top of the proposed garage, providing access to the front of the house via a new concrete walkway and steps. An existing stairway landing at street level, which currently allows joint access to the applicant's stairway as well as to the stairway of the direct abutter to the north, will remain. A door will be located on the side of the garage, underneath the stairway, which will allow for direct access to



the sidewalk. The rooftop of the garage will be landscaped to blend in with existing front yard landscaping.

## FINDINGS

### Section 5.43 Exceptions to Yard and Setback Regulations

#### Section 5.50 Front Yard Requirements

#### Section 5.51 Projections into Front Yards, Variance Required

#### Section 5.52 Fences and Terraces in Front Yards

#### Section 5.53 Accessory Buildings in Front Yards

#### Section 5.60 Side Yard Requirements

#### Section 5.61 Projections into Side Yards

#### Section 5.62 Fences and Terraces in Side Yards

### Section 5.63 Accessory Buildings or Structures in Side Yards

No part of any accessory building or structure situated within 75 feet of the street line shall extend into any required side yard\*

<b>Proposed Garage/Driveway</b>	<b>Required/Allowed</b>	<b>Proposed</b>	<b>Relief</b>
Front Yard Setback (Accessory Bldg.)	15 feet	0 feet	S.P./Variance*
Projection into Front Yards	3.5 feet	15 feet	S.P./Variance*
Terraces in Front Yard	7.5 feet	0 feet	S.P./Variance*
Side Yard Setback (Accessory Bldg.)	10 feet	0 feet	S.P./Variance*
Projection into Side Yards	4 feet	10 feet	S.P./Variance*
Terraces in Side Yard	6 feet	0 feet	S.P./Variance*

\* A special permit under Section 5.43 to waive dimensional requirements may be granted provided that counterbalancing amenities are provided.

### Section 6.04.9.b – Design of All Off-Street Parking Facilities

The area of the lot not landscaped and so maintained, including driveways, shall be graded, surfaced with asphalt or other suitable material, and drained to the satisfaction of the Building Commissioner, to the extent necessary to prevent nuisance of dust, erosion, or excessive water flow across public ways.\*\*

### Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities

### Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities

<b>Proposed Driveway</b>	<b>Required</b>	<b>Proposed</b>	<b>Relief</b>
Parking/Driveway Front Setback	15 feet	0 feet	S.P./Variance**
Parking/Driveway Side Setback	5 feet	2 feet	S.P./Variance**

\*\*Under Section 6.04.12 the Board of Appeals may waive dimensional requirements for parking facilities to serve existing buildings.

### **Section 8.02.2 - Alteration or Extension**

A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Mr. Serafin stated that the Planning Board is generally supportive of this proposal to construct a garage and driveway within the front yard setback. The steep topography of the lot eliminates the option of parking vehicles to the side or rear of the house, and provides justification for front yard parking. The proposed garage, driveway, and retaining wall are attractive and sensitive in their design to allow for maximum preservation of landscaping. Additionally, the siting of the driveway and garage, which are perpendicular to the streetscape, will allow for adequate sight lines and safe ingress/egress of vehicles from the site. This driveway scheme is of particular merit, as the property is located across the street from the entry drive for Driscoll Elementary School. The Planning Board recently approved a similar parking scheme at 53 Westbourne Terrace. However, the Planning Board feels that certain design aspects of the proposed plans and elevations need to be clarified. Final material selection for the garage façade, driveway, garage door, stairway, driveway surface and retaining wall will need to be determined. Additionally, a landscaping plan should be submitted for the front yard and roof of the garage. The applicant should modify the plans to address these issues, subject to the review and approval of the Planning Board. He said that the Planning Board also has concerns regarding the location of the proposed driveway curb cut. Currently there are two (2) street trees and a fire hydrant in the public right-of-way, in the vicinity of the proposed curb cut. The applicant should contact the Town Tree Warden regarding permission for the removal of the trees, and should consult the Town Engineer regarding the creation of the curb cut and as to whether the hydrant needs to be moved. As a counterbalancing amenity for setback relief, the applicant will be providing



landscaping atop the proposed garage, as well as a wood-clad façade wall along the streetscape.

Therefore, the Planning Board recommends approval of the plans, in concept, titled “45 Westbourne Terrace Garage”, prepared by Philip Kramer AIA, and stamped by Frank P Janusz, dated 22 March 2007, and marked “Schematic Design Only; NOT FOR CONSTRUCTION”, subject to the following conditions:

1. **Prior to the issuance of a building permit, the applicant shall receive permission from the Town’s Tree Warden to remove the two existing street trees in the vicinity of the proposed driveway.**
2. **Prior to the issuance of a building permit, the applicant shall receive permission from the Town Engineer to create a curb cut and to move the existing fire hydrant.**
3. **Prior to the issuance a building permit, the applicant shall submit to the Planning Board for review and approval, final constructions plans and final construction elevations showing the design and materials of the garage façade, garage door, driveway, stairway, handrails, exterior lighting and retaining wall. Plans of proposed construction details shall be stamped and signed by a registered land surveyor.**
4. **Prior to the issuance of a building permit, a final landscaping plan, showing all counterbalancing amenities, shall be submitted for the review and approval of the Planning Board.**
5. **Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions and final elevations stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that all relief could be granted in the form of special permits. A special permit under **Section 5.43** to waive dimensional requirements where counterbalancing amenities are provided, a special permit under **Section 6.04.12** to waive dimensional requirements for parking facilities

to serve existing buildings and a special permit under Section 8.02.2 to enlarge a non-conforming condition. Mr. Hitchcock stated that the Building Department had no problem with the project, the relief required or the conditions recommended by the Planning Board. Mr. Hitchcock did mention that condition number three proposed by the Planning Board would more appropriately be under the purview of an architect rather than a land surveyor.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under Section 5.43, Section 6.04.12 and Section 8.02.2 of the Zoning Bylaw and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the Board voted unanimously to grant all the special permit relief requested with the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall receive permission from the Town's Tree Warden to remove the two existing street trees in the vicinity of the proposed driveway.**
- 2. Prior to the issuance of a building permit, the applicant shall receive permission from the Town Engineer to create a curb cut and to move the existing fire hydrant.**
- 3. Prior to the issuance a building permit, the applicant shall submit to the Planning Board for review and approval, final constructions plans and final construction elevations showing the design and materials of the garage façade, garage door, driveway, stairway, handrails, exterior lighting and retaining wall.**



Plans of proposed construction details shall be stamped and signed by a registered architect or engineer.

4. Prior to the issuance of a building permit, a final landscaping plan, showing all counterbalancing amenities, shall be submitted for the review and approval of the Planning Board.
5. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions and final elevations stamped and signed by a registered architect and land surveyor/engineer, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals



Diane R. Gordon

Filing Date: June 08, 2007

A True Copy:

ATTEST



Patrick J. Ward

Clerk,

Board of Appeals